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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/609,266	06/26/2003	James E. Allard	MS1-1499US	8120
22801 7590 01/30/2007 LEE & HAYES PLLC 421 W RIVERSIDE AVENUE SUITE 500 SPOKANE, WA 99201			EXAMINER NGUYEN, KIM T	
			ART UNIT	PAPER NUMBER
			3714	
SHORTENED STATUTORY PERIOD OF RESPONSE		NOTIFICATION DATE	DELIVERY MODE	
3 MONTHS		01/30/2007	ELECTRONIC	

**Please find below and/or attached an Office communication concerning this application or proceeding.**

If NO period for reply is specified above, the maximum statutory period will apply and will expire 6 MONTHS from the mailing date of this communication.

Notice of this Office communication was sent electronically on the above-indicated "Notification Date" and has a shortened statutory period for reply of 3 MONTHS from 01/30/2007.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

lhptoms@leehayes.com

## Office Action Summary

Application No.

10/609,266

Applicant(s)

ALLARD ET AL.

Examiner

Kim T. Nguyen

Art Unit

3714

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 03 November 2006.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-53 is/are pending in the application.
- 4a) Of the above claim(s) 1-13, 34 and 35 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 14-33 and 36-53 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)            | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)   | Paper No(s)/Mail Date. _____                                      |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date <u>See Continuation Sheet</u> .                                  | 6) <input type="checkbox"/> Other: _____                          |

Continuation of Attachment(s) 3). Information Disclosure Statement(s) (PTO/SB/08), Paper No(s)/Mail Date :1/15/04, 2/2/04, 2/10/04, 3/19/04, 8/23/04, 9/2/04, 1/13/05, 2/7/05, 5/9/05, 7/28/05, 10/7/05, 1/12/06, 4/12/06, 6/19/06, 9/19/06, 12/18/06 .

### **DETAILED ACTION**

Applicant's election without traverse on 11/3/06 is acknowledged . Currently, applicant elects Group II, claims 14-33 and 36-53. Claims 14-33 and 36-53 are examined in this office action, claims 1-13 and 34-35 are withdrawn from consideration, and claims 1-53 are pending.

#### ***Claim Rejections - 35 USC § 112***

1. The following is a quotation of the second paragraph of 35 U.S.C. 112:  
  
The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.
2. Claims 14-33 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.
  - a) Claim 14 recites the limitation "the storage device" in lines 10-11. There is insufficient antecedent basis for this limitation in the claim.
  - b) Claim 24 recites the limitation "the storage device" in line 11. There is insufficient antecedent basis for this limitation in the claim.
  - c) The remaining claims are rejected as being dependent on the rejected base claim.

#### ***Claim Rejections - 35 USC § 103***

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

**4. Claims 14-33 and 36-53 are rejected under 35 U.S.C. 103(a) as being unpatentable over Van Ryzin (US 6,393,430) in view of Shih et al (US 2003/0227473).**

Claims 14-15: Van Ryzin discloses a method comprising obtaining an audio track from an audio source (col. 5, line 4); saving an identifier of the audio source (col. 4, lines 11-24); and when a database containing meta data associated with the audio track is available, obtaining the meta data associated with the audio track from the database and storing the meta data associated with the audio track, wherein the meta data is obtained based at least in part on the identifier saved on the storage device (col. 3, lines 60-67; col. 4, lines 1-25; and col. 5, lines 32-50). Van Ryzin does not explicitly disclose implementing the method in a game console and saving the audio track so that a copy of the audio track is available when the audio source is no longer accessible to the game console, wherein the audio track is at least part of a user-created soundtrack. However, since Van Ryzin discloses saving the audio track so that a copy of the audio track is available when the audio source is no longer accessible to the PC, wherein the audio track is at least part of a user-created soundtrack (col. 5, lines 37-48), and since Shih discloses that audio source is accessible to a gaming platform such as PC or game consoles (paragraph 0025), it would have been obvious to a person of ordinary skill in the art at the time the invention was made to

implement the method as taught by Van Ryzin in the game console of Shih and save the audio track as taught by Van Ryzin on a storage device of the game console of Shih in order to facilitate incorporating custom playlists into a video game.

Claims 16-17: Van Ryzin discloses storing the database on an internal hard disk drive (col. 4, lines 8-9).

Claim 18: Van Ryzin discloses saving an indicator of the audio track; and wherein the meta data is obtained based at least in part on both the saved identifier and the saved indicator on the storage device (col. 4, lines 9-25 and 28-45).

Claims 19-20: Van Ryzin discloses that the audio source comprises an audio CD (col. 3, lines 55-58). Further, using an audio DVD as a source medium would have been well known to a person of ordinary skill in the art at the time the invention was made.

Claim 21: Van Ryzin discloses including table of content information for the audio source (col. 3, lines 60-66; and col. 4, lines 1-25).

Claims 22-23: storing data in an optical disc readable by a game console would have been well known to a person of ordinary skill in the art at the time the invention was made.

Claims 24-33: refer to discussion in claims 14-23 above.

Claim 36: refer to discussion in claim 14 above. Further, Van Ryzin discloses using an identifier of the audio source to retrieve meta data associated with the audio track from a database if the database is accessible (col. 4, lines 1-7 and 39-40). Van Ryzin does not explicitly disclose saving the identifier of the audio source if the

database is not accessible. However, since Van Ryzin discloses saving the identifier of the audio source (col. 4, lines 56-59; col. 4, lines 9-19), Van Ryzin obviously encompasses saving the identifier of the audio source if the database is not accessible.

Claim 37: retrieving saved data using the name of the saved data file at any time would have been well known to a person of ordinary skill in the art at the time the invention was made.

Claims 38-53: refer to discussion in claims 16, 18-23, 36-37 above.

5. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Kim T. Nguyen whose telephone number is (571) 272-4441. The examiner can normally be reached on Monday-Thursday from 8:30AM to 5:00PM ET.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Xuan Thai, can be reached on (571) 272-7147. The central official fax number is (571) 273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the

Application/Control Number: 10/609,266

Page 6

Art Unit: 3714

Electronic Business Center (EBC) at 866-217-9197 (toll-free).

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Date: January 20, 2007

A handwritten signature in black ink, appearing to read 'K. T. Nguyen', with a horizontal line underneath.

Kim T. Nguyen  
Primary Examiner  
Art Unit 3714